

**City of Houston, Texas, Ordinance No. 2009-\_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 37 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO UTILITIES; PROVIDING FOR REGULATION OF WATER AND SEWER PUBLIC UTILITIES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING PENALTIES; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**WHEREAS**, Chapter 37 of the Code of Ordinances, Houston, Texas, provides for the regulation of various public utilities doing business within the corporate limits of the City of Houston; and

**WHEREAS**, certain provisions of the current Chapter 37 need to be updated to conform to the current business practices of and state laws applicable to the regulated utilities; and

**WHEREAS**, the City Council has also identified the need to initiate regulation of privately-owned public water and sewer utilities located within the boundaries of the City of Houston to assure quality service, adequate fire protection, and fair and reasonable rates for those citizens served by said utilities; and

**WHEREAS**, the City controls the rights of a private corporation, association or person to use and to install, locate, relocate, maintain, repair and operate facilities along, across, under or over the City's streets and to condition such use for the public interest and welfare; and

**WHEREAS**, the City Council finds that it is in the public interest of the residents of the City of Houston that a form of permit be required to control and condition the rights of privately-owned public water and sewer utilities to use and to install locate, relocate, maintain, repair and operate facilities along, across, under or over the City's streets and to condition such use for the public interest and welfare; and

**WHEREAS**, the Director of the City's Department of Administration & Regulatory Affairs, in conjunction with the City's Department of Public Works and Engineering, has proposed amendments to Chapter 37 of the Code of Ordinances to implement a program of regulation for privately-owned public water and sewer utilities; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**DRAFT NOT YET APPROVED  
BY THE CITY ATTORNEY**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section 2.** That Sections 37-1 through 37-3 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

**"Sec. 37-1. Definitions.**

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Act* means the Texas Administrative Code, Health and Safety Code, Utilities Code, or Water Code as the same shall be applicable to any utility or public utility governed by this ordinance.

*Director* means the director of administration and regulatory affairs or his designee(s).

*Public utility or utility* means a 'public utility' as that term is defined in the Act as to which the city acting through the city council constitutes a regulatory authority having original jurisdiction, or which is under the regulatory authority of the city by exercise of the city's home rule authority; the term shall include, but not be limited to, electric utilities, gas utilities, water utilities, and sewer utilities providing service within the corporate limits of the city.

*Regulatory authority* means the city council of the city.

*Utility official* has the meaning ascribed in section 1-2(a) of this Code.

(b) To the extent applicable, and where dictated by the application and usage thereof, the definitions of the words and terms set forth in the Act are hereby adopted and shall apply herein with the same force and effect as if set forth in this chapter, provided that, in the event of conflict, the definitions of this chapter shall control.

**Sec. 37-2. Scope.**

The provisions of this chapter shall not apply to any municipally-owned or operated public utility of the city.

**Sec. 37-3. Public utility improvements on city property.**

(a) It shall be unlawful for any public utility, its officers, agents or employees to make, construct or install any character of improvements, changes or new service along, upon, under or through the streets or public property of the city without first having obtained written consent therefor from the city council.

(b) Any public utility owning or operating facilities situated within any street or other public right-of-way shall comply with article XVIII of chapter 40 of this Code regarding relocation of such facilities."

**Section 3.** That Section 37-6 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-6. Uniform accounts.**

Every electric utility shall keep uniform accounts as prescribed from time to time by the Texas Public Utility Commission. Every gas utility shall keep uniform accounts as prescribed from time to time by the Texas Railroad Commission. Every water or sewer utility shall keep uniform accounts as prescribed from time to time by the Texas Commission on Environmental Quality."

**Section 4.** That Section 37-8 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-8. Compliance with law.**

Save and except as provided in section 37-1(b) of this Code, to the extent of any conflict between any of the terms or provisions of this chapter and any applicable state or federal law, rule or regulation, the provisions of such state or federal law, rule or regulation shall prevail."

**Section 5.** That Article I of Chapter 37 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Section 37-9 that reads as follows:

**"Sec. 37-9. Penalty.**

Any person who violates any provision of this chapter shall be guilty of an offense and upon conviction thereof, shall be punished as provided by section 1-6 of this Code. Each and every day that any such violation continues shall constitute a separate offense and shall be punishable as such."

**Section 6.** That Section 37-21 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-21. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Public utility* means a 'public utility' as that term is defined in section 37-1 of this Code.

*Regulatory chain* means the mayor, the city council, the city attorney, the director and any other employees of the city whose duties are directly connected, in whole or in part, with the regulation of rates or services of public utilities. Staff members employed by the persons enumerated above are in the regulatory chain if their assigned duties relate to the regulation of public utility rates or services. City employees who deal with public utilities on matters not involving the regulation of rates or services are not within the regulatory chain."

**Section 7.** That Item (4) of Section 37-24 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(4) Contacts by the utility with city employees which do not pertain to the regulation of rates or services including, but not limited to, liaison with the city regarding street cuts or easements, the use of property by the parks and recreation department, the payment of taxes and the settlement of claims."

**Section 8.** That Section 37-36 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-36. Definition.**

As used in this article, 'utility' means a 'public utility' as that term is defined in section 37-1 of this Code."

**Section 9.** That 37-37 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-37. Interpretation.**

The provisions of this article shall not be construed to relieve any utility of its obligation to file with and make available to the city, the director, or any other city officer or agency, any information not specified in this article which is required to be furnished or made available by state law or applicable franchise agreement. Furthermore, each utility shall file, furnish and make available to the director, within such time limits as he reasonably prescribes, all information that the director may from time to time lawfully request."

**Section 10.** That Subsection (a) of Section 37-39 of the Code of Ordinances, Houston, Texas, is hereby amended by adding new Items (5) and (6) to read as follows:

- "(5) For water utilities, a complete list of wholesale water supply contracts.
- (6) For sewer utilities, a complete list of wastewater treatment contracts."

and renumbering the subsequent Items accordingly.

**Section 11.** That the new Item (7) of Subsection (a) of Section 37-39 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

- "(7) A detailed map, in a format acceptable to the utility official, of the service area of the relevant system or division of the utility, including, for water utilities, the location of emergency interconnections to back-up water supply and functional fire hydrants."

**Section 12.** That Subsection (b) of Section 37-39 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(b) Each amendment, revision or addition to the information required in such permanent file shall, insofar as may be practicable, be furnished to the director by the utility as soon as reasonably possible, but without exception at least 60 days prior to filing any statement of intent to change rates."

**Section 13.** That Section 37-40 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-40. Periodic information file.**

(a) Each utility shall furnish to the director such information, documents and other written materials, from time to time, as may be necessary for the director to maintain a complete and current periodic information file for such utility including the following:

- (1) Two copies of each and every report or other document containing operating or financial information which the utility files with the United States Securities and Exchange Commission or Federal Energy Regulatory Commission.
- (2) One copy of each and every written report affecting the system or division which the utility files with or furnishes to the Texas Public Utility Commission, Texas Railroad Commission, Texas Commission on Environmental Quality, Environmental Protection Agency, or Texas Attorney General.
- (3) One copy of each and every public report which the utility furnishes to its stockholders.
- (4) Two copies of each and every response made by the utility (and its controlling company, if any) or on behalf of the utility by its auditors (independent or otherwise) to the Financial Accounting Standards Board regarding exposure drafts or statements proposed by the Financial Accounting Standards Board that will materially affect the utility's operations.
- (5) One copy of any other similar financial statement or report that reflects the impact of rates on the operation of the utility.

(b) The documents enumerated in items (a)(1) through (a)(5), inclusive, shall be furnished to the director at or about the same time that they

are provided to the person or persons for which such documents were prepared."

**Section 14.** That the caption of Division 2 of Article III of Chapter 37 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"DIVISION 2. RATE FILING PACKAGES FOR ELECTRIC AND GAS UTILITIES"

**Section 15.** That Division 2 of Article III of Chapter 37 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Section 37-50 that reads as follows:

**"Sec. 37-50. Scope.**

The terms and provisions of this division shall apply to rate packages filed by or on behalf of electric and gas utilities."

**Section 16.** That Section 37-51 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-51. Required.**

All statements of intent to change rates which are filed by any utility with the city pursuant to the Act shall be in duplicate originals with one counterpart to be filed with the director accompanied by ten copies and the other counterpart to be filed with the city secretary. If the two counterparts are not filed on the same date, then the later of the filing date with the city secretary or the director shall constitute the date of filing for all purposes. All such statements of intent shall include the information specified in this division."

**Section 17.** That Section 37-53 of the Code of Ordinances, Houston, Texas, is hereby deleted and reserved.

**Section 18.** That Section 37-56 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-56. Statement of intent to contain all required information.**

For purposes of the time limits set forth in the Act, no statement of intent shall be deemed filed with the city unless and until it contains substantially all the information called for in this division; however, a statement of intent shall be deemed to be sufficiently complete to start the time limits of the Act running, unless the director, within 30 days of the time the statement is filed in the case of changes which are not major changes and within 60 days of the time the statement is filed in the case of major changes, notifies the utility of insufficiency of the statement. Each such notice shall be in writing and shall specify each insufficiency with particularity. In the event such notice is given, the time limits specified in the Act shall start running as of the time that all of such insufficiencies are corrected."

**Section 19.** That Section 37-57 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-57. Statements of intent regarding rate changes which are not major changes.**

Statements of intent to change rates in a manner which will not constitute a "major change" as that term is defined in the Act shall include the following information:

- (1) A complete set of the proposed tariff revisions.
- (2) A statement specifying in detail the classes and numbers of utility customers affected, and the change in gross revenues (in absolute dollar amounts and in percentage terms, by customer class and by total) that the utility expects the revised tariffs to furnish as opposed to those furnished by existing tariffs.
- (3) All other information, if any, required by the Act.
- (4) A statement that the proposed change of rates if authorized will not effect a "major change" as that term is defined in the Act.
- (5) All other information furnished to other regulatory agencies."

**Section 20.** That Section 37-58 of the Code of Ordinances, Houston, Texas, are hereby amended by deleting the phrase "Section 43 of" wherever it appears therein.



**Section 21.** That Subitem k of Item (2) of Section 37-58 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

- "k. For gas utilities, a schedule showing facilities under construction or included in the construction budget itemized by:
1. Date in service or estimated date in service;
  2. Estimated total cost;
  3. Cost at the beginning and end of test year;
  4. Estimated annual cost from test year end until placement in service;
  5. Purpose of construction (replacement or growth);"

**Section 22.** That Article III of Chapter 37 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Division 3 that reads as follows:

**"DIVISION 3. RATE FILING PACKAGES FOR WATER AND SEWER UTILITIES**

**Sec. 37-66. Scope.**

The terms and provisions of this division shall apply to rate packages filed by or on behalf of water and sewer utilities.

**Sec. 37-67. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Public utility* or *utility* means a "public utility" as that term is defined in section 37-1 of this Code.

*TCEQ* means the Texas Commission on Environmental Quality or its successor entity with equivalent public water and sewer utility jurisdiction, and references to TCEQ Standards shall refer to the

appropriate numbered sections of the TCEQ rate filing standards and the information required therein.

**Sec. 37-68. Required and additional information.**

(a) All statements of intent to change rates shall be filed by a water or sewer utility with the city pursuant to TCEQ Standards in duplicate originals with one counterpart to be filed with the director and the other counterpart to be filed with the city secretary. If the two counterparts are not filed on the same date, then the later filed of the two shall determine the date of filing for all purposes. All such statements of intent shall include the information specified in this division.

(b) A utility may submit such additional information as it considers relevant and appropriate.

(c) For the convenience of the utilities in assembling the information required in this division and for the sake of the convenience of the city in interpreting the information, the director may prescribe forms and formats for the submission of the information required in this division. Each utility shall comply with all applicable forms and formats which have been so prescribed.

(d) Each rate filing package and supplement or addendum thereto shall be submitted in the form of an affidavit or have an affidavit attached thereto setting forth that all information contained therein is true and correct. Such affidavit shall be executed by:

- (1) The owner, if the utility is a proprietorship.
- (2) A general partner, if the utility is a partnership.
- (3) The corporate president or any vice-president or corporate secretary, if the utility is a corporation.

**Sec. 37-69. Statement of intent to contain all required information.**

(a) For purposes of the time limits set forth in the Act, no statement of intent for rate charges filed by any water or sewer utility shall be deemed filed with the city unless and until it contains all the information called for in the TCEQ Standards and this division. Any statement of intent that is incomplete shall be rejected by the director and the utility shall be required to file a complete application before the city will consider any further action thereon.

A statement of intent shall include all information required by the TCEQ Standards, as well as the following:

- (1) The identification of any positions that are filled by owners or relatives of owners. Further, for each position that is filled by an owner or relative of the owner, the level of compensation must be provided along with documentation that fully justifies why such level is appropriate and necessary.
- (2) The following for any plant that became fully depreciated or amortized subsequent to the test year relied upon in the utility's most recent rate proceeding:
  - a. Description of the plant.
  - b. The original cost of the plant and date placed in to service.
  - c. The date the plant became fully depreciated or amortized.
  - d. The depreciation or amortization rate applicable to the plant in the most recent rate proceeding.
  - e. Whether the utility continued accruing depreciation or amortization expense and if not, why not.
  - f. Specifically when the plant was retired, if it has been retired.
- (3) Justification for the requested level of return on equity, cost of debt, and capital structure. In those instances where the cost of debt is based on an affiliate relationship or where the debt is not obtained through an arms length transaction, then justification for the cost level of the debt shall also be provided.
- (4) The level of accumulated deferred federal income taxes as a component of invested capital. The filing shall contain the detailed analysis supporting the level of accumulated deferred federal income taxes.
- (5) The following additional income and expense information:

- a. Identification of any expense, by category, paid to an owner or affiliate of the utility. For each such expense the utility shall provide all support and justification why such payment to the owner or affiliate is reasonable and necessary and could not be obtained from an unrelated party at a lower cost.
- b. The corresponding expense by category for the two years prior to the test year (i.e., months 1 through 12 prior to the beginning of the test year and months 13 through 24 prior to the beginning of the test year).

(6) The following additional general information:

- a. The actual balance sheet and income statement corresponding to its requested test year.
- b. Any change in the staffing level that has transpired since the end of the test year.
- c. A listing of all deficiencies cited by the TCEQ since the end of the test year in the utility's prior rate proceeding, including all remedies undertaken by the utility to address the TCEQ cited deficiencies.

(7) All information provided by the utility shall be for the entire water or sewer system, including those portions of the system extending beyond the city limits, unless another basis is specified by the director.

(b) The director may request additional information as he deems necessary. All responses to the director's requests for information shall be provided within 10 business days of receipt by the utility. However, at the director's discretion, the deadline for responses may be shortened or extended. The director may recommend disallowance of the utility's rate case expenses as a sanction for the utility's failure to provide complete or timely responses to requests for information. To the extent that a response to a request for information requires the disclosure of proprietary or trade secret information or other confidential information, the director will endeavor to preserve the confidentiality of such information as otherwise permissible under State law."

**Section 23.** That Section 37-73 of the Code of Ordinances, Houston, Texas, is hereby amended deleting the phrase "section 24 of" wherever it appears therein.

**Section 24.** That Section 37-86 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 37-86. Appointment and availability.**

In consonance with the powers of the mayor and the city council conferred by the city charter, the mayor is hereby authorized to appoint, subject to confirmation by the city council, up to six persons to be examiners in public utility hearings. After such appointment and confirmation, each of such persons shall then be available from time to time, when so instructed by the mayor, to conduct hearings with respect to a specified public utility."

**Section 25.** That the first sentence of Section 37-96 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"When a hearing has been closed as provided in section 37-95, the examiner shall receive from the shorthand reporter a complete transcript of the record of such hearing as soon as the same has been completed."

**Section 26.** That Article V of Chapter 37 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"ARTICLE V. STANDARDS OF SERVICE**

**DIVISION 1. GENERALLY**

**Sec. 37-116. Definition.**

As used in this article, the term "utility" means a "public utility" as that term is defined in the act as to which the city acting through its city council constitutes a regulatory authority having original jurisdiction.

**Sec. 37-117. Electric utilities.**

The city hereby adopts by reference, with the same force and effect as if set out herein, Chapter 25 of the Substantive Rules of the Public Utility

Commission of Texas and the definitions established therein as now or hereafter amended insofar as said rules apply to rates or service provided by electric utilities. Any reference to the Texas Public Utility Commission in the Chapter 25 rules adopted by this section shall be read and construed as a reference to the city.

**Sec. 37-118. Gas utilities.**

The city hereby adopts by reference with the same force and effect as if set out herein the Chapter 7 Gas Services Division Rules and definitions contained therein of the Texas Railroad Commission as they relate to rates or service provided by gas utilities. Any reference to the Texas Railroad Commission in the Chapter 7 rules adopted in this section shall be read and construed as a reference to the city.

**Sec. 37-119. Non-waiver.**

Nothing contained in this article shall be construed as constituting a surrender of jurisdiction by the city over the regulation of the rates or service provided by any utility. The city reserves the right to adopt local modifications to the regulations which are adopted by reference in this article or to supercede the same in whole or in part with local rules to the extent of its jurisdictional area.

**Secs. 37-120--37-160. Reserved.**

**DIVISION 2. WATER AND SEWER UTILITIES**

**Sec. 37-161. Scope.**

The provisions of this division shall apply to all public utilities that provide water and/or sewer service within the corporate limits of the city whose rates and services are subject to regulation by the city under the Act.

**Sec. 37-162. Utility public safety standards enforced.**

For public utilities regulated under this division, the director will implement and enforce standards for potable water service and sewer service at least equivalent to those prescribed by the Texas Commission on Environmental Quality.

**Sec. 37-163. Permit required.**

**DRAFT NOT YET APPROVED  
BY THE CITY ATTORNEY**

(a) The utility will be required to apply for and obtain a public utility safety permit on an annual basis, no later than August 31 of each year, using such forms and in such manner as determined by the director, as both a condition of the city's consent to the utility's use of the city's rights-of-way and a condition of the utility's provision of tariffed service within the corporate limits of the city. An annual fee of \$1000 shall be required incident to the issuance of said permit.

(b) The permit shall require the utility to file simultaneous reports on a monthly basis with the director, the health officer, and the utility official regarding water treatment, water quality, wastewater treatment, wastewater quality and other requirements mandated by city ordinance, by State law or rules of the Texas Commission on Environmental Quality, or by federal law.

(c) The permit shall require the utility to provide access to the director or his designee to physically inspect the utility's water treatment facilities, sewage treatment facilities, water and sewer lines, fire hydrants, and other related operations; to perform necessary lab testing to ensure that water quality and wastewater effluent quality are in compliance with TCEQ requirements; and to review the records of operation thereof on an annual basis, or on a more frequent basis as deemed appropriate by the director in response to a complaint or other information reported to the director. In addition to other required tests, the utility shall submit to the director a copy of all test results for the Point of Entry and Disinfection By-Product tests. If in the judgment of the director additional tests are warranted in response to a complaint or other indication of non-compliance, the utility shall reimburse the city for the cost of such tests. Reimbursement shall be due within thirty days of invoicing by the city; failure to timely reimburse the city for the cost of such tests shall constitute non compliance with the permit.

(d) The permit shall require the utility to prepare and file with the director an annual maintenance plan containing, at a minimum, a detailed schedule for maintaining or replacing the components of the water system or the sewer system.

(e) The permit shall be subject to such public safety standards as the utility official may develop and the director may implement concerning fire flow, hydrants, pipe size, and any other parameters associated with fire fighting or fire suppression standards.

(f) The permit shall be subject to such public safety standards as the utility official may develop and the director may implement concerning

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customer service, including response time for outages, emergency service standards, and complaint resolution.

(g) The permit shall require the utility to inform the director:

- (1) No later than thirty days before the utility files plans with the TCEQ to extend service to unserved areas or to exclude any area from the utility's service area; and
- (2) Immediately in the event the utility is made aware that any other person intends to request or has requested that the TCEQ exclude any area from the utility's service area.

**Secs. 37-164–37-170. Reserved.**

### **DIVISION 3. FIRE SUPPRESSION FACILITIES**

**Sec. 37-171. Fire hydrants.**

(a) It is the policy of the city to protect the public safety in residential areas of the city served by public utility water systems. Texas Administrative Code Sections 290.44(d), 290.46(r) and 290.46(x) are hereby adopted as the Utility Public Safety Standard for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas within the city served by public utility water systems:

- (1) A public utility water system must maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection; and
- (2) A public utility water system shall also provide fire fighting capability by delivering water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as fire fighting.

(b) The director is hereby authorized to bring fire hydrant systems and facilities into compliance with the Utility Public Safety Standard at the utility's expense. This authorization shall include the authority to require the installation of new fire hydrants in accordance with and where such fire hydrants are appropriate under Chapter 42 of this Code.



(c) A public utility providing water service to customers in a residential area within the city shall ensure that any fire hydrants connected to its water system comply with the Utility Public Safety Standard.

(d) It shall be unlawful for any public utility providing water service to customers in a residential area within the city to fail to comply with the Utility Public Safety Standard after September 30, 2010, or in lieu thereof, to submit a Compliance Plan acceptable to the Director by September 30, 2010; provided, however, that if a different date for such compliance is established pursuant to section 37-172 of this Code, that date shall control.

**Sec. 37-172. Utility Public Safety Program.**

(a) **Purpose.** This Utility Public Safety Program ("Program") is intended to promote the timely and efficient compliance by all utilities with the Utility Public Safety Standard and the other requirements of this division by providing a mechanism for reimbursement of a public utility's costs of compliance.

(b) **Definitions.** For purposes of this Program, the following terms shall have the meanings ascribed herein:

*Certificate of deferral* means a certificate issued by the director upon receipt of the utility official's assessment approving a public water utility's compliance plan.

*Compliance plan* means a plan submitted by a public water utility to the utility official and to the director simultaneously on a form promulgated for the purpose, to bring the utility's system into actual compliance with the Utility Public Safety Standard and the other requirements of this division. Said plan shall include provision for the installation of new fire hydrants in accordance with and where such fire hydrants are appropriate under Chapter 42 of this Code. All public utilities providing water service to residential areas shall be required to file a compliance plan.

*Compliance status* means that an eligible utility is:

- (1) Operating under a certificate of deferral issued by the director;
- (2) Not in violation of a TCEQ Order; and

(3) Not the subject of regulatory enforcement.

*Designation* means a request filed by an eligible utility to recover a designated amount in rates as described in subsection (d) below.

*Designated qualifying utility reimbursement* means, for a public water utility operating a system that does not actually meet the Utility Public Safety Standard or the other requirements of this division, but holds a certificate of deferral, the estimated cost to comply with the Standard and the other requirements of this division, subject to true-up, amortized over a minimum ten year period.

*Eligible utility* means a public utility providing water service to customers in a residential area within the city that: (1) claims a right to reimbursement of its system costs to actually meet the Standard and the other requirements of this division; (2) has submitted its compliance plan to the utility official and the director and its designation to the director; and (3) holds a certificate of deferral.

*Public utility* has the meaning assigned by Section 13.002 of the Texas Water Code.

*Regulatory enforcement* means the exercise of the TCEQ's regulatory jurisdiction over a public water utility through a contested or uncontested proceeding for bringing a public water utility into compliance with the Utility Public Safety Standard, or such other action to protect the public safety as the city may determine necessary, including but not limited to the initiation of proceedings to terminate the public utility's certificate of convenience and necessity.

*TCEQ* means the Texas Commission on Environmental Quality or its successor entity with equivalent public water and sewer utility jurisdiction.

*Utility Public Safety Standard (or Standard)* means Texas Administrative Code Sections 290.44(d), 290.46 (r) and 290.46(x), hereby adopted as the Utility Public Safety Standard for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas within the city, to the extent said standards provide that: (1) a public utility water system must maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per

connection; and (2) a public utility water system shall also provide fire fighting capability by delivering water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as fire fighting.

(c) **Designation and Compliance Plan of Eligible Utility.** A public utility providing water service to a residential area within the city must:

- (1) Execute and submit not later than September 30, 2010, on forms promulgated for the purpose:
  - a. Its compliance plan to the utility official and the director; and
  - b. Its designation to the director;
- (2) Obtain a certificate of deferral; and
- (3) Remain in compliance status; and
- (4) Complete the facilities required under its approved compliance plan no later than September 30, 2012; save and except, that the installation of new fire hydrants in accordance with and where such hydrants are appropriate under Chapter 42 of this Code shall be completed at such time as is determined by the director to be reasonable without imposing an undue financial or other burden on the public utility or the ratepayer.

(d) **Director's Issuance of Certificate of Deferral and Approval of Designation.** Within 60 days of receipt of the utility official's assessment approving a public utility's compliance plan, the director shall issue a certificate of deferral stating that the public utility is in compliance status, subject to the following:

- (1) An eligible utility may submit with its compliance plan a designation requesting that it be allowed to recover in rates the estimated system costs to comply with the Standard and the other requirements of this division. The amount recovered in rates may not exceed the public utility's actual reasonable system costs to comply with the Standard and the other

requirements of this division, subject to true up, amortized over a minimum 10-year period.

- (2) The director shall notify the public utility in writing of the approval or disapproval of its designation.
- (3) The director may recommend to city council that it adopt an ordinance allowing the eligible utility to recover in rates the designated qualifying utility reimbursement, amortized over a minimum ten year period, subject to true-up on proof of reasonable costs expended for the system to actually meet the Standard and the other requirements of this division.
- (4) The director may recommend to city council that it adopt an ordinance denying the designation. Within 10 days of receipt of the director's notice of disapproval of the designation, the submitting public utility may submit additional information to justify its designation. If within ten days of receipt of additional information, the director then denies approval of the designation, based upon review of the additional information, or if the public utility elects not to submit the additional information, the director shall give written notice to the utility (at the contact address on file with the utility official) of the director's recommendation that the city council adopt an ordinance denying the designation.
- (5) The director may only deny approval of a designation if the designation:
  - a. Unreasonably discriminates among customer classes served in meeting the Utility Public Safety Standard or the other requirements of this division; or
  - b. Conflicts with a city ordinance or TCEQ Order or Rule.
- (6) If the public utility requests a hearing within ten days of its receipt of the director's notice of disapproval of designation, the matter shall be placed before city council for a hearing in a manner similar to that process for appeals contained in rule 12 of the city council rules of procedure (section 2-2 of this Code); provided, however, that the decision of the city council shall be based solely upon its review of the designation and related documentation submitted by the public utility and any other

information considered by the director, which determination shall be final.

- (7) All proceedings before the city council to consider a designation shall comply with all provisions of Chapter 13 of the Water Code applicable to notice of municipal ratemaking proceedings.
- (8) Consideration of a designation and related documentation resulting in adoption by city council of an ordinance denying approval of the designation is without prejudice to its consideration in a subsequent ratemaking proceeding.

**(e) Revocation of Certificate of Deferral.**

- (1) The director shall recommend to the city council that it adopt an ordinance to revoke a public utility's certificate of deferral if the utility official finds and notifies the director that the public utility operates its system or otherwise conducts its affairs in a manner that:
  - a. Unreasonably delays its ability to meet the Utility Public Safety Standard or the other requirements of this division; or
  - b. Unreasonably discriminates among customer classes served in meeting the Utility Public Safety Standard or the other requirements of this division.
- (2) The director shall recommend to the city council that it adopt an ordinance to revoke a certificate of deferral if the director finds the public utility operates its system or otherwise conducts its affairs in a manner that conflicts with a city ordinance or TCEQ Order or Rule."

**Section 27.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no

portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 28.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on September 1, 2009.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor of the City of Houston

Prepared by Legal Dept. \_\_\_\_\_  
LWS:asw 05/21/2009                      Senior Assistant City Attorney  
Requested by Alfred Jay Moran, Jr., Director, Department of Administration and Regulatory Affairs  
L.D. File No. \_\_\_\_\_